



**Office of the New York State
Attorney General**

**Letitia James
Attorney General**

December 9, 2024

By ECF

Honorable Lois Bloom
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N.Y. 11201

Re: *Leibovitz v. Procida*,
E.D.N.Y. No. 24 Civ. 4779 (AMD) (LB)

Dear Chief Magistrate Judge Bloom:

This Office (“OAG”) represents State Defendants¹ in this action filed by Etan Leibovitz (“Plaintiff”).² We respectfully request that the Court decide State Defendants’ motion to dismiss without regard to Plaintiff’s letter, posted on the ECF docket on December 5, 2024, requesting a *Valentin* order to identify certain “John Doe” defendants. (ECF No. 39.) The identification of the John Doe defendants has no bearing on State Defendants’ August 30, 2024, motion to dismiss (ECF Nos. 23-27), as Plaintiff asserts separate and distinct claims against the two sets of putative defendants. *See generally* Verified Compl., July 9, 2024 (ECF No. 1) (the “Complaint”).

We respectfully request that the Court maintain its newly issued briefing schedule (*see* Docket Entry, Dec. 4, 2024), and consider State Defendants’ motion to dismiss without awaiting the resolution of any issues raised by Plaintiff’s request for a *Valentin* order. Notably, Plaintiff’s claims against the John Doe court officers differ materially from his claims against State Defendants. He primarily alleges that State Defendants falsely arrested and maliciously prosecuted him. *See* Compl., Claims IV-X. He further alleges that Assistant Attorney General Nicole Procida, who successfully defended the State in Plaintiff’s prior action based on substantially the same allegations, committed “deceit” and violated his free speech rights by purportedly “blocking” his phone calls to OAG. *See id.*, Claims I-III. Plaintiff pleads none of those claims against the John Doe court officers, instead accusing them of assault and battery, excessive use of force, and a failure to intervene. *See id.*, Claims XI-XIII. As a result, the John

¹ The State Defendants are Assistant Attorney General Nicole Procida, Court Officer Kenneth Coy, former Court Officer Michael Zebro, and Judge John C.V. Katsanos.

² Plaintiff is entitled to “less deference than most *pro se* litigants because of [his] extensive litigation history.” *In re Lynch*, No. 19-2965, 2022 WL 16467, at *2 (2d Cir. Jan. 3, 2022) (citing *Tracy v. Freshwater*, 623 F.3d 90, 102 (2d Cir. 2010)).

Doe defendants' identities, and the potential course of this litigation against them, have no bearing on the merits of State Defendants' motion to dismiss.

OAG does not currently represent any parties other than State Defendants. Nevertheless, we stand ready to work with the New York State Unified Court System to respond to any *Valentin* order the Court may issue.

We appreciate the Court's continued attention to this litigation.

Respectfully,

/s/ Michael A. Berg

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